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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1291

WILLIAM L. TAUB,
Petitioner

v.

RANDOLPH HALE (a/k/a RANDOLPH HALE-ALCAZAR THEATRE), UNITED STATES MARSHALS, ALBERT GINS AND MELVIN J. KATZ, and all other ATTORNEYS and AGENTS for RANDOLPH HALE,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

H. Hugo Perez, Attorney for William L. Taub petitioner herein, on his behalf respectfully presents this petition and requests that the Supreme Court of the United States grant this petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit in the above captioned case.

PER CURIAM OPINION DELIVERED IN THE COURT BELOW TO BE REVIEWED

The opinion delivered in the United States Court of Appeals for the Second Circuit No. 203, September Term 1965 decided January 14, 1966, is set forth infra as an Appendix hereto at page 1a.

Petitioner's request for a Hearing en banc by the same Court was made orally and denied on December 5th, 1965 and therefore is not set forth in the appendix.

JURISDICTION

Petitioner relies, as the basis for jurisdiction of this Supreme Court of the United States, upon Section 1254 of Title 28 of the U. S. Code. Petitioner declares and verily believes that there are very ". . . special and important reasons . . ." which call for a grant of review on Writ of Certiorari in the "sound judicial discretion" of this Honorable Court within the meaning of Rule 19, as more specifically set forth immediately following in the questions presented for review and arguments amplifying the reasons relied on for allowance of this Writ.

QUESTIONS PRESENTED

1. Have Petitioner's constitutional rights of Representation by counsel been violated when District Court barred his counsel from any further participation in proceedings before it at time when substantial property rights were determined and adjudicated and Petitioner had no counsel.

2. Whether Petitioner's Constitutional Rights to Due Process were violated by refusal of District Court to permit a trial on the merits when dismissing case with prejudice under FRCP 41(b) there

having been an "Impossibility to prosecute" set of facts rather than a "failure to prosecute".

3. Were Constitutional rights of Petitioner violated by failure of Court of Appeals to require his former counsel to make available all pertinent documents essential to the Appeal, wilfully withheld by said counsel.

STATUTES INVOLVED

United States Constitution
United States Code
Federal Rules of Civil Procedure. Rule 41(b)

STATEMENT

The affirming Opinion of the U. S. Court of Appeals for the Second Circuit, cast grave doubts as to its being a sound and just decision, in that the same conveniently sidesteps basic constitutional questions before that body for adjudication, questions which merit serious consideration, affecting fundamental constitutional rights of this petitioner, which were set forth in the written briefs and also presented orally to that Court.

One of the basic purposes of the Due Process Clause is to protect a person against having burdens so irreparable upon him, except be it in accordance with the valid laws of the land. By implication in such constitutional safeguard is the promise that the law must be one that carries an understandable meaning with legal standards enforceable by the Courts. Such is not the case in the mentioned decision, of the U. S. Court of Appeals for the Second Circuit.

The Opinion (Appendix, infra) failed to apply the accepted law and weight of authority to the *exact* facts

supporting the argued appeal, in that the plaintiff-appellant therein, was actually under an "impossibility" to prosecute his cause in the Court below (District Court). Petitioner states that from December 1963 to October 1964, he was in fact without counsel to represent him; Judge Palmieri having dismissed petitioner's counsel just prior to petitioner's family signing stipulation-settlement, to which petitioner has vehemently objected and refused to sign; and the same judge barring his attorney from actively representing this petitioner. These facts coupled with Judge Palmieri's staying of all proceedings since December 23, 1963; and petitioner's sickness, nearly fatal; this fact known to Judge Palmieri who arraigned petitioner December 11, 1963, brutally and forcefully taken out of his sick bed appearing in pajamas before the Judge and not allowed to be represented by counsel, in flagrant violation of his constitutional rights. While Appeal was pending Judge Palmieri disqualified himself as to the case of *Taub* v. *Hale* on July 9, 1965, as the record below shows (Proceedings in the District Court for So. Dist. NY) The disputed issue here is the District Court's dismissal with prejudice due to an "impossibility to prosecute" while we understand the rule of law to be for "failure to prosecute."

Petitioner's counsel, on January 5th, 1966, arguing the appeal, as well as the U. S. Court of Appeals Second Circuit, both were prejudiced by the lack of necessary documents, to wit, a $100,000.00 assignment, contracts, etc.; all indispensable and pertinent to the appeal; documents which were the timely object of a "Motion for Emergency Order to Turn Over Original Files" which was never acted upon by the Court before the Appeal, but until more than two months subsequent to the Argument of the Appeal, when said

motion was denied on March 17, 1966; all this to the great damage and detriment of petitioner's rights. These documents and files are today still in the possession of petitioner's former counsel. Obviously, petitioner's present counsel was unable, at the time of the argument of said Appeal, to answer certain questions from the Bench, which had a direct bearing on the Court's decision, which decision reveals on its face, inconsistencies, indicating that the Court did not take the time to deliberate on the seriousness of the issues, but arrived at its conclusion by turning papers once over lightly. In its findings (Opinion, infra, Appendix) page 2a we read: ". . . and none of the named parties has ever been served." Yet in its conclusion, page 2a on this same point the Court speaks only of delay in Service: "There was also a long and unnecessary delay in Service . . . " Petitioner states that Messrs. Katz and Gins were served and both have indeed appeared in all proceedings in the case of *Taub* v. *Hale.*

If Justice is to be done and administered fairly, a Court ought to know all the pertinent facts previous to rendering an Opinion. Then, Courts will not act on surmise, guess or conjecture, but proceed with insight and understanding.

ARGUMENT AMPLIFYING THE REASONS RELIED UPON FOR THE GRANTING OF A WRIT

The principal two cases cited by the U. S. Court of Appeals Second Circuit to support their affirming Opinion, which could as well be cited as authority to reverse and remand, are not cases in point. The first one, *Link* v. *Wabash R. Co.,* 370 U.S. 626 (1962), Northern District, Indiana, was then the oldest case on its dockets (6 years old), as against 14 months in *Taub* v. *Hale.*

Yet, this Honorable Court was divided with strong dissents by Chief Justice Warren, Justice Black and Justice Douglas. Furthermore in the decision of this Honorable Court in this *Link* case, Justice White and the late Justice Frankfurter neither one participated. May I call this Honorable Court's attention to the last sentence of the last paragraph of the dissent at 370 U.S. 649: "I fear that this case is not lkiely to stand out in the future as the best example of American Justice."

In *Taub* v. *Hale,* towards the end of Petitioner's convalescence, he hired Special Process Server, several California Counsel were consulted and retained, in an all out effort to serve Defendant Hale in person. But most of the time Petitioner remained without counsel and was prohibited from engaging counsel of his own choice. If responsibility for Petitioner's alleged dilatoriness is placed on any one it should be placed squarely on the District Judge who took away his right to counsel, the very same Judge Palmieri who dismissed with prejudice the action of *Taub* v. *Hale* in the U. S. District Court, Southern District of New York. The prejudice is obvious on the part of the District Judge and on this ground alone the Order of Dismissal with prejudice should have been reversed and remanded.

The other case relied upon by the U. S. Court of Appeals Second Circuit in its Per Curiam decision, *Messenger* v. *United States,* 231 F. 2nd 328 (2nd Cir. 1956), in which dismissal under Rule 41(b) was warranted due to ". . . six years of a complete lack of any prosecutor effort" is clearly distinguishable from the case at bar, *Taub* v. *Hale* in which there were present, factors affording a genuine justification for the alleged

delay; for Petitioner was 10 out of 14 months barred from having counsel and simultaneously sick for about 6 months, under Doctors (M.D.s) orders and under doctors and nurses care, suffering of yellow jaundice and hepatitis, as authoritatively diagnosed by reputable Medical Doctors. Thus 4 months as a lapse of time, is not such dilatoriness, we submit, as to constitute neither a sound nor a fair basis for the dismissal with prejudice by the District Court.

Such Order of Dismissal has inflicted so harsh and irreparable injury on a sick man and his family, both without counsel at a time so crucial in the prosecution of his cause; when the only request Petitioner has is that he be given a fair hearing and his day in Court on the merits, of his cause of action, may the chips fall where they may. Said dismissal with prejudice, considering the surrounding circumstances should not fall within the purview of FRCP 41(b). Petitioner's rights have been arbitrarily ignored and destroyed, and his property confiscated without Due Process of Law, all of which is extremely offensive to our Federal and State Constitutions.

WHEREFORE, the foregoing premises considered, it is urged upon this Honorable Court, that this petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 203—September Term, 1965.

(Argued January 5, 1966 Decided January 14, 1966.)

Docket No. 29766

WILLIAM L. TAUB,

Plaintiff-Appellant,

—v.—

RANDOLPH HALE (also known as Randolph Hale-Alcazar Theatre), United States Marshals, Albert B. Gins and Melvin J. Katz, and all other Attorneys and Agents for Randolph Hale,

Defendants-Appellees.

Before:

MOORE, SMITH and ANDERSON,

Circuit Judges.

Appeal from order of the United States District Court for the Southern District of New York, Palmieri, *J.*, dismissing the action for lack of prosecution. Affirmed.

H. HUGO PEREZ, Esq., Washington, D. C., *for Plaintiff-Appellant.*

MELVIN J. KATZ, Esq., New York, N. Y. (Albert B. Gins, Esq., New York, N. Y. and Marvin L. Levitt, Esq., New York, N. Y. on the brief), *for Defendants-Appellees.*

PER CURIAM:

The defendant, Hale, on August 18, 1960 obtained a judgment by default, in the amount of $30,680.59, against the present plaintiff, Taub, in an action in the Northern District of California. On May 29, 1961 that judgment was registered in the Southern District of New York, and in February, 1962, supplementary proceedings were commenced there for the purpose of collecting the judgment. In October, 1963, a civil commitment order was issued, and on December 9, 1963, Taub commenced the present suit to set aside the California judgment as having been obtained by fraud and deceit. This action by Taub temporarily delayed the commitment order but Judge Weinfeld eventually directed the Marshal to proceed, and the debtor was committed to jail. Meanwhile, Taub took no further action in *Taub* v. *Hale,* prior to this appeal, and none of the named parties has ever been served. By order dated May 21, 1965 Judge Palmieri dismissed the action, with prejudice, against Hale, pursuant to F. R. Civ. P. 41(b). It is from this order that Taub appeals. We affirm.

Under that Rule and the inherent power of a court to dismiss for failure to prosecute, a district judge may, *sua sponte,* and without notice to the parties, dismiss a complaint for want of prosecution, and such dismissal is largely a matter of the judge's discretion. See, *Link* v. *Wabash R. Co.,* 370 U. S. 626 (1962); 5 Moore, Federal Practice ¶41.11[2] at 1114-15 (2d ed. 1964); *Zielinski* v. *United States,* 120 F. 2d 792 (2d Cir. 1941).

It seems plain that the *Taub* v. *Hale* suit was brought only to confuse and delay the proceedings in the *Hale* v. *Taub* litigation and to prevent Hale from satisfying his judgment in that action. There was also a long and unnecessary delay in service which would, in itself, be adequate grounds for dismissal, *Messenger* v. *United States,* 231 F. 2d 328 (2d Cir. 1956); 5 Moore, Federal Practice

¶41.11 [2] at 1124 (2d ed. 1964), absent factors which would afford justification or excuse. *Cf.* 2 Moore, Federal Practice ¶4.06-1, at 981 (2d ed. 1965).

The district judge did not abuse his discretion. The order appealed from is affirmed.

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October Term, 1965

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Respondents.

RESPONDENTS RANDOLPH HALE, ALBERT B. GINS AND MELVIN J. KATZ'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In the

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—v.—

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RESPONDENTS RANDOLPH HALE, ALBERT B. GINS AND MELVIN J. KATZ'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents' Statement of the Case

Petitioner has completely misstated the facts and has failed to fully, adequately and properly apprise this Honorable Court of the extensive background underlying this case and the main related case entitled "Randolph Hale also known as Randolph-Hale Alcazar Theatre, Judgment Creditor, vs. William L. Taub, Judgment Debtor. (Southern District of New York, M 18-302).

Respondents' brief in the Court below sets forth in some detail the extensive dilatory and evasive tactics continually utilized by the Petitioner herein in his vain attempts to

prevent the orderly collection by Respondent, Hale, of a valid judgment originally obtained against Petitioner on August 18, 1960 in the sum of $30,680.59, in the Northern District of California and which judgment was duly registered in the Southern District of New York on May 29, 1961.

Extensive supplementary proceedings were conducted against the Petitioner in the Southern District of New York. After being held in Civil contempt on three separate occasions by three different judges, the Petitioner was ultimately fined the amount of the judgment in September, 1963, and was ordered to pay the fine in weekly installments. Having failed to comply with the Court's mandates, an arrest order was issued in October, 1963.

The Petitioner took several unsuccessful appeals relative to the fine and arrest orders, to the Court below, in October and December, 1963. Petitioner's Habeas Corpus application to this Court was dismissed on January 3, 1964 (*Taub* v. *Warden Federal House of Detention,* 883 Misc. Oct. 1963 Term). After making three additional separate unsuccessful applications for a stay in the Court below, Petitioner then brought a separate ruse action on December 9, 1963, in the Southern District Court, wherein he became the plaintiff, and named the judgment creditor (Hale) along with the U.S. Marshal and Hale's attorneys as the defendants. Petitioner did not reveal to Judge Edward Weinfeld, then sitting as ex-parte motion judge, the extensive proceedings pending in the *Hale* v. *Taub* supplementary proceedings case. Petitioner thus obtained a temporary stay. However on argument of the motion, on the next day, when Judge Weinfeld was fully apprised of the extensive proceedings pending, the stay was immediately vacated and the debtor was thereafter lawfully arrested.

After this last maneuver failed, the debtor took no further action in the *Taub* v. *Hale et al.* case. (He never even served the summons and complaint on any of the named defendants.) The issues raised in his complaint were either moot or were already determined in the main case and were *res judicata.* After more than fourteen (14) months had elapsed and the *Taub* v. *Hale* case had remained completely dormant, Respondents brought a motion to dismiss Petitioner's action pursuant to F.R.C.P. 41(b).

Several extensive hearings were had wherein Petitioner was at all times represented by counsel. Petitioner agreed in open court to voluntarily dismiss the action, with prejudice, as against all the defendants, except the defendant Randolph Hale. (Note that the instant application erroneously still names all the defendants as respondents despite Petitioner's agreement.)

Judge Palmieri ultimately dismissed the action pursuant to F.R.C.P. 41(b), as against all the defendants including Hale, for lack of prosecution. (Petitioner fails to even set forth a copy of the said order in his Appendix.)

Petitioner appealed the dismissal to the Circuit Court of Appeals, Second Circuit, wherein the only question raised in Petitioner's brief was

> "Is a delay of 14 months after filing a complaint in failing to serve a defendant who is without the jurisdiction of the Court, a proper basis for dismissing a cause of action on the ground of unreasonable neglect to prosecute?"

The three questions now presented for the first time in the Petition for a Writ of Certiorari were never presented

to the Court below, and on this ground alone the Petition must and should be dismissed.

Furthermore the statements contained in Petitioner's brief are wholly and completely untrue. (Petitioner even fails to set forth in his appendix the complete opinion of the Court below. See Respondents' appendix for the omitted part of the opinion.)

Petitioner was never deprived of his right to counsel, nor was his counsel ever barred from any participation in any proceeding before the District Court.

Petitioner, after his release from custody in December, 1963, had fully recovered from any claimed illness, and in fact Petitioner consulted and/or retained the following attorneys in connection with this and the related *Hale* v. *Taub* proceedings after his release and during the claimed "Impossibility to prosecute":

Jacob Rassner Esq., New York City
Hon. Herbert Brownell, New York City
Hon. Samuel Pierce, New York City
Joseph Dean Edwards Esq., New York City
Jacob Rassner Esq. (second time), New York City
Donald D. Phillips Esq., Atlantic City, N. J.
H. Hugo Perez Esq., Wash. D. C.
Hon. J. Howard McGrath, Wash. D. C.

In addition Petitioner had retained and discharged over twenty (20) separate attorneys at each stage of the supplementary proceedings action in attempting to avoid paying the underlying judgment.

Finally Petitioner, contrary to his statement that he was incapacitated during the fourteen month period, was actu-

ally travelling throughout the United States and the Far East. There are letters, telegrams and statements made on the record during these extensive hearings evidencing Petitioner's extensive travels during his alleged incapacity.

This Petitioner is constantly abusing and misusing the Federal Judiciary, unfortunately so far, with impunity. He has already been before this Court in connection with these actions on several prior occasions; viz:— On January 3, 1964 Petitioner's application for a Habeas Corpus was dismissed (*Taub* v. *Warden Federal House of Detention supra*); and in July, 1965 Application by Petitioner and his then attorney for a stay of the District Court contempt hearing—*Phillips and Taub* v. *Palmieri,* —— Misc. October, 1965 Term.

Reasons Why Writ Must Be Denied

1. There is no valid legal or factual reason why Certiorari should be granted herein. There is no constitutional question involved. There are no principles, the settlement of which is of importance to public as distinguished from that of parties and there is no real and embarrassing conflict of opinion between the Circuit Courts of Appeals involved in this underlying case. (See *Rice* v. *Sioux City Memorial Park Cemetery, U. S.,* Iowa, 1955, 75 S.Ct. 614, 349 U.S. 70; 99 L.Ed. 897.)

2. The District Court below had the inherent power to dismiss for failure to prosecute; a district judge may, *sua sponte,* and without notice to the parties, dismiss a complaint for want of prosecution and such dismissal is largely a matter of the judge's discretion. The district court

judge properly exercised his discretion in dismissing the action. See *Link* v. *Wabash R. Co.*, 370 U.S. 626 (1962); 5 Moore, Federal Practice Sec. 41.11(2) at 1114-15 (2d Ed. 1964); *Zielinski* v. *United States*, 120 F. 2d 792 (2d Cir. 1941); *Messenger* v. *United States*, 231 F. 2d 328 (2d Cir. 1956).

3. Petitioner is improperly raising for the first time in this Court three questions which were not raised in the Courts below. Furthermore the factual statements alleged in these three questions are wholly and completely false and unsubstantiated by any valid proof. Petitioner's current counsel first represented Petitioner in December, 1965, long after the protracted supplementary proceedings had taken place, and counsel's allegations in his Petition lack any factual or legal basis whatsoever.

4. Petitioner has failed to comply with Rule 23 by failing to set forth in his appendix the complete opinion of the Circuit Court of Appeals and the original order of dismissal of Hon. Edmund L. Palmieri dated May 21, 1965; and further by failing to state the specific sections of the United States Constitution and the United States Code relied on by Petitioner.

CONCLUSION

Based on the foregoing it is respectfully requested that the petition for a writ of certiorari be denied and that costs be awarded to respondents for opposing this petition.

Respectfully submitted,

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MELVIN J. KATZ
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On the Brief

APPENDIX

Additional Portion of Opinion of Circuit Court of Appeals, Second Circuit Omitted From Petitioner's Application

(Letterhead of A. Daniel Fusaro, Clerk, United States Courthouse, New York 10007)

COPY

March 23, 1966

William L. Taub v. Randolph Hale

Docket No. 29766 Decided January 14, 1966

In the Per Curiam opinion in the above entitled case, the following change has been made:

Page 692—14th line from bottom—insert "footnote" after "jail". The footnote reads as follows:

> "On December 10, 1963, Judge Weinfeld vacated his order of the previous day because Taub had obviously concealed 'material facts'. The Marshal effected the arrest pursuant to the commitment order issued by Judge Palmieri on October 8, 1963, from which Taub had already on three separate occasions unsuccessfully applied to this court for a stay order."

A. Daniel Fusaro
Clerk

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Term, 1966

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SUPPLEMENTAL PETITION

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Respondents.

SUPPLEMENTAL PETITION

The petitioner, begs leave to submit this Supplemental Petition in the above-captioned matter, and beg the Court to grant leave to include therein statutes and cases in point.

This petition is brought on for the purpose of obtaining a re-hearing of a Writ of Certiorari to the Supreme Court of the United States.

The main petition herein is absent of citation and cases in point.

The petition and the relief sought therein is primarily based upon the prohibition and vision in Title 28 U. S. Code 455 which reads:

"Interest of justice or judge. Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related

to or connected with any parties or attorneys as to render it improper, in his opinion for him to get on the trial, appeal or other proceedings therein."

The petition herein alleges on Page 2 of the said petition, that Judge HARRIS, U. S. D. J. (in the California proceeding) had a pecuniary interest in the outcome of that matter, and in fact, was a business associate and partner of the defendant, HALE. (As will be shown by *affidavits* now in the possession of your petitioner.)

This petition is verified. It is the clear intent of the aforementioned cited Statute that a Judge who has such an interest in any proceeding or matter, cannot possibly do justice to litigants. The due process clause of the U. S. Constitution has clearly been violated by reason of the bias Judge presiding in this matter. (Fifth Amendment, U. S. Constitution.)

No person can be deprived of his property without due process of law. *Union Telegraph Company* v. *City of Davenport,* 97 U. S. 396.

Nor should any Federal officer having an interest in any controversy rule such capacity. *Tumey* v. *City of Ohio,* 47 S. C. 437. Also see *Murchison,* 75 S. C. 623.

It is also noted that the Counterclaim of the defendant, HALE, the judgment upon which is bottomed, all of the irregularities mentioned in the main petition, was entered without personal service or any service or notice to your petitioner. Rule 4D of the Federal Practice Rules specifically requires that jurisdiction does not attach until personal service or other pro-service is had. Notice by service or otherwise is a necessary requisite of due process of law. *State of Missouri el re Hurwitz* v. *North,* 45 S. C. 384, 271 U. S. 40. See also with equal emphasis *Hollingsworth* v. *Barbour,* 29 U. S. 466.

It is respectfully urged that the Court amend page 5 of the main petition and under "Conclusion" so as to read, "that pursuant to 28 U. S. Code 455."

That your petitioner will prove upon the re-hearing of this Writ that his constitutional rights as guaranteed under the Sixth Amendment was also violated. This is evidenced by the action taken by the U. S. Marshals, when the door to his residence was chopped down, and he was arrested and hauled before the Hon. PALMIERI (see page 3 of main petition). Due process of law was also denied in this instance by reason of the fact that he was never afforded an opportunity to consult with his attorney at any such of those supplemental proceedings.

WHEREFORE, your petitioner respectfully prays that the relief sought in the main petition in all respects be granted.

WILLIAM L. TAUB

(Verification by Petitioner.)

MOTION FILED
SEP 30 1966

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SUPPLEMENTAL PETITION ON PETITION FOR REHEARING OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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Respondents.

SUPPLEMENTAL PETITION ON PETITION FOR REHEARING OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Petitioner by reason of newly discovered matter in the within action, begs leave to submit this supplemental petition in support of petitioner's sought after relief in the main petition.

1. On or about September 2, 1966, your petitioner obtained knowledge and information which petitioner thought most relevant to the issues herein involved. Petitioner immediately contacted his Chief Counsel, the now deceased Hon. J. Howard McGrath. The information concerned itself with prior alleged misconduct and behavior of Judge George B. Harris. Upon such consultation with the Hon. Mr. McGrath, it was decided by Hon. Mr. McGrath, that this information should be included with the

other information submitted previously in the main petition, and the supplement thereto.

2. That Judge Harris was named in a proceeding of alleged misdoings. These misdoings were concerned with an almost similar nature as the matter now before this Court. There, it was alleged that Judge Harris was co-partner with persons under investigation in a Federal Tax matter. The **News Papers** reported that by reason of Judge Harris' influence, the matter, as to him, was never acted upon in the Federal Grand Jury. (See below)

(See Appendix I) (Copy of newspaper clippings)

3. The other information which your petitioner exhibited to his Chief Counsel J. Howard McGrath, were three (3) affidavits executed by three (3) impartial persons who had knowledge of Judge Harris' interest in the underlying judgment, the main subject matter now before the Court.

(Affidavits are printed under Appendix II)

4. Your petitioner can only reassert and pray again that the Court, in its wisdom, will seize upon this opportunity to declare that Title 28 U.S. Code 455 was intended as a deterrent for the judiciary acting in matters or determining matters which they themselves are, or should be a party thereto. Your petitioner as a lone individual was without power, to engage in combat with that agent of the Court to whom he had sought justice, when in fact, under such bias conditions the judicial determination had been etched before the commencement of the action.

5. The untimely death of the Hon. J. Howard McGrath, prevented an earlier presentation of this matter which would have an effect upon more forceful, coming from such an Honorable source.

CONCLUSION AND PRAYER

Petitioner prays that this Honorable Court grant this petition for rehearing on certiorari and on rehearing, issue a writ of certiorari reversing the below with instructions the judgment be set aside.

Certificate of Counsel

I, KENNETH D. MILLER, hereby certify that the above Supplemental Petition is submitted to this honorable court in good faith and not intended for purposes of delay in this matter.

.....

September 30, 1966

APPENDIX I

Newspaper clippings from the New York Times, San Francisco Herald Examiner, and Associated Press.

The New York Times, Sunday, February 3, 1952

U. S. JUDGE ORDERS INQUIRY INTO PAPER

San Francisco Series Linked Another Jurist to Promotion Backed by Tax Officer

SAN FRANCISCO, Feb. 2 (AP)—An immediate Federal grand jury investigation to determine if The San Francisco Call-Bulletin printed news stories that obstructed justice was ordered yesterday by Federal Judge Oliver J. Carter.

Judge Carter's action was prompted by an article in yesterday's paper that linked Federal Judge George B. Harris to a Carmel, Calif., land development plan which, according to the paper, was promoted by a deputy collector of internal revenue. Yesterday's article, Judge Carter said, was the culmination of a series by the paper.

After ordering the investigation, he handed a copy of the paper headlined "U. S. Judge Harris Named in Land Deal," to Sidney Kessler, the jury foreman.

Randolph Hearst, publisher of The Call-Bulletin and son of the late William Randolph Hearst, when informed of Judge Carter's action, told The Associated Press:

"It's all right with us if they want to investigate us. We print the news as we see it."

FREEDOM OF THE PRESS

THE LATEST challenge to freedom of the press comes from a Federal judge in San Francisco and in-

volves the San Francisco Call-Bulletin, a Hearst Newspaper.

United States District Judge Oliver J. Carter ordered a grand jury inquiry to determine whether The Call-Bulletin was "obstructing justice" after it had published information from the Congressional Record connecting the name of Federal Judge George B. Harris with a land development plan promoted by a Deputy Collector of Internal Revenue.

The Call-Bulletin, through its publisher Randolph Apperson Hearst, had said it knows of no justification for Judge Carter's order, but that it welcomes a grand jury investigation concerning its publication of news relating to Federal office-holders in San Francisco.

From Judge Carter has come no explanation of why he issued the grand jury directive or what he hopes to accomplish by it.

How The Call-Bulletin could be guilty of "obstructing justice" by printing news from such a source is a little vague to us.

But of one thing we can be certain:

It has been the policy of the Hearst Newspapers for more than fifty years to print the news forcefully and truthfully—and there will be no deviation from that policy.

S. F. Examiner

FEB 7—1952

JUDGE DIRECT TO PROBE
FEB 2 1952

Federal Statute Is Cited

Federal Judge Oliver J. Carter last night directed the Federal grand jury to investigate cer-

tain articles in the daily press of San Francisco to determine whether the persons responsible for them have been guilty of obstructing justice.

He directed the grand jury's attention particularly to an article appearing in yesterday's editions of an afternoon newspaper and other articles in that newspaper over the past several months.

As he did so he held aloft the article in question which related that Carter's colleague, Judge George B. Harris, had been described in the Congressional Record as a participant in a Carmel real estate promotion. Other participants include a number of prominent Democrats in and out of the Bureau of Internal Revenue.

SUIT NAMES JUDGE HARRIS

Federal Judge George B. (Harris) and two others were named in a lawsuit filed in superior court yesterday by the purchaser of a lot in the Yankee Point Acres development near Carmel.

The suit also named Charles G. Sawyer, promoter of the swanky subdivision and resigned deputy chief field agent of the Bureau of Internal Revenue and his wife Marian.

The complaint described Judge Harris, Sawyer and the latter's wife, Marian, as "co-partners doing business as Yankee Point Acres, Inc."

The suit was brought by Earl J. Currivan, of 1257 Twenty-seventh Avenue, a mortician who operates the Little Chapel of the Sunset, 2532 Irving Street.

Through Attorney Allison J. Schofield, Currivan demanded the return of $5,500 which he said he deposited on the purchase of a one-acre lot in Yankee Point Acres last March 4.

Schofield said Currivan planned to build a home on the lot, the total price of which was $10,500.

Currivan had plans drawn for his house, Schofield said, and submitted them to Yankee Point Acres, Inc. for approval. The corporation refused to okay the plans, Schofield said. Currivan wants his money back.

Judge Harris said he had not been notified of the suit and refused to comment on it.

11-5-53

San Francisco Examiner

WORDS HEARD BY REPORTER IN NEXT ROOM

An intriguing telephone conversation he overheard here in 1952 was recalled for the Keating committee yesterday by Theodore Link, a St. Louis newspaperman.

He said that early in 1952 he heard Irvin Goldstein, sent here by Washington as a special assistant attorney general to handle some tax scandal cases, talking to an unidentified Washington official.

He quoted Goldstein as saying that "the Malone case was red hot, a hot political potato," that a woman had "talked too much" and there would have to be an indictment.

John A. Malone, brother of the local Democratic Central Committee head at that time and a former tax official, was indicted for backdating tax returns. He was freed by a directed verdict from Federal Judge Louis E. Goodman after Edward M. Furtado, the principal Government witness, declined to testify. Furtado has since testified that three other persons could have given the same testimony against Malone, but were not called by the prosecution.

Link said that on the day in question he had sought to reach Federal Judge George B. Harris and get Judge Harris' reply to a newspaper story about a Carmel land deal. The story pictured the judge as the partner of a tax employe in the land transaction,

JUN 2—1953

JUDGE CARTER MODIFIES DEMANDS FOR 'OBSTRUCTION OF JUSTICE' PROBE

Yesterday he cited statutes and circumstances which made it apparent he was directing the inquiry toward last year's grand jury "tampering" episode.

In February it was an episode concerning Federal Judge George Harris that was given his particular attention. This was a newspaper story, based on the Congressional Record, mentioning Judge Harris' name with a Carmel real estate development.

S. F. Examiner

MAR 4—1952

ASSOCIATED PRESS FEB. 2, 1952

JUDGES, PUBLISHER FIGURE IN PROBE

California Judge Oliver J. Carter (left), Federal Judge George B. Harris (center) and publisher Randolph Hearst (right) of the San Francisco, Calif., Call-Bulletin are the three principal figures in a demand in Washington, D.C., Feb. 2, that a House Judiciary Subcommittee look into an order by Judge Carter asking a Grand Jury to investigate the Call-Bulletin. The paper, publishing a series on income tax scandals, quoted

Rep. Patrick J. Hilling (R-Calif) Feb. 1 as linking Harris to a land development plan said to have been promoted by a Deputy Collector of Internal Revenue.

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APPENDIX II

Affidavits of Albert Thall, Ray Jarvis, and Raoul Appel

Affidavit of Albert Thall

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ALBERT THALL, being first duly sworn on oath, deposes and says that:

1. I am a theatrical manager-producer executive for twenty-five years; have been so engaged in the theatrical industry for many projects in New York, Hollywood, California, Miami, Florida, Chicago, Illinois, and other principal cities throughout the United States. I live at 57 West 58th Street, New York City.

2. I personally know William L. Taub, 605 Park Avenue, New York, New York, for approximately twenty years, and have worked for and with him in many important theatrical business presentations of national and international importance.

3. I was employed by the said William L. Taub in or about December 1959 to work as Associate Producer and Executive Assistant for a new musical show, "THE FABULOUS JOSEPHINE BAKER", to be produced in the United States by Mr. Taub early in 1960, which was also to include the recording of albums, television, motion pictures, etc.

4. I have carefully read the affidavit of Judge George B. Harris of the U.S.D.C., San Francisco, California, executed under oath, dated July 19, 1965 and filed in the Superior Court of New Jersey, Chancery Division—Atlantic

County—Docket No. F-891-63 in re Gins v. Taub. I know the statements made in the affidavit of Judge Harris are completely false, untrue, and state that Judge Harris did meet me face to face at William L. Taub's office at the 20th-Century Fox Studios, West Los Angeles, California, in May 1960 and then one week thereafter at the Alcazar Theater in San Francisco, California. At each of the aforementioned two meetings other witnesses were also present. I further allege and know that Judge Harris was the financial co-partner of Randolph Hale and that he, Judge Harris, was so introduced to me and the others present by Randolph Hale, but under an assumed name. That he was the same Judge Harris who did frustrate the lawful attempts of William L. Taub to replevin the physical properties belonging to him at the Alcazar Theater in San Francisco on or about May 1960 and the further attempts of William L. Taub to secure San Francisco counsel to prosecute his primary suit and subsequent appeals.

5. I was personally present in Mr. Taub's apartment in New York City and did engage in a three-way long distance telephone conversation on the evening of June 11, 1960 in New York City, among Mr. Taub on one extension telephone, myself on another extension telephone at 10:00 p.m. New York time, with James F. Thacher, Esq. in San Francisco, California. Mr. Thacher had been Mr. Taub's attorney in San Francisco and during the telephone conversation he informed Mr. Taub that there was to be a hearing held that very night at 11:30 p.m. California time, which was on a Saturday, and that Mr. Thacher could not legally examine any witnesses in behalf of Mr. Taub and that he, Mr. Thacher, had withdrawn as Mr. Taub's legal counsel and was immediately returning all files and papers the following morning, Sunday, June 12, 1960 to Mr. Taub, and indeed he did, by personally delivering same to Ray Jarvis, in San Francisco, a theatrical performer employed by Mr. Taub. Mr. Thacher further cautioned Mr. Taub and me not to "set foot in San Francisco."

6. I have personal knowledge that Mr. Taub was obliged to cable several thousand dollars in advance to Josephine Baker in France prior to the time she came to New York from France in January 1960, and this was not less than Fifteen Thousand Dollars ($15,000.00), all transmitted directly to her in France by me in accordance with Mr. Taub's instructions. Miss Baker arrived in New York City in January 1960 and again Mr. Taub advanced approximately Thirty Thousand Dollars ($30,000.00) for production expenses, including music, costumes, travel, rehearsals, make-up, etc. Mr. Taub was also compelled to advance an additional Twenty Thousand Dollars ($20,000.00) to Miss Baker in New York, which was before and during the three-week performance of the said show in Chicago, Illinois. Miss Baker had contracted many financial obligations of indebtedness in New York and in Chicago and upon the show closing in Chicago she departed immediately via air for France with transportation provided by Mr. Taub and she departed leaving unpaid bills for her hotel, furrier, beauty parlor, legal services, stenographic services, overseas calls and cables and, in addition, several thousand dollars of indebtedness to Mr. Taub.

7. Miss Baker was to return to the United States in April 1960, begin rehearsals for the same show in New York City, make television appearances and open at the Huntington Hartford Theater, Hollywood, California, for three weeks as the star in the show, "THE FABULOUS JOSEPHINE BAKER", and at the Alcazar Theater, San Francisco, immediately thereafter for three weeks. Thereafter the show was scheduled for a Broadway appearance and she was also to record albums and make television appearances. Before she returned to America and while she was still in France, in March 1960, she again demanded cable advances of several thousand dollars from Mr. Taub and I did personally cable these monies to her and her bank in France. Mr. Taub also made a hurried trip from New York

to see Miss Baker in France and Belgium and was compelled to obtain a Forty Thousand Dollar ($40,000.00) loan for Miss Baker while he was in France and which she agreed to repay after her arrival in New York. Mr. Taub also prepaid an additional Thirty Five Thousand Dollars ($35,000.00) for new sets, costumes made in France and the United States, new music and musical arrangements-orchestrations, rehearsals, transportation from Europe to New York, Los Angeles, San Francisco and return to Europe for approximately four people, and air transportation New York-Los Angeles-San Francisco-New York for at least twenty other people.

8. When Miss Baker arrived in New York City in April 1960 she stayed at Mr. Taub's residence in New York and came without any money. She again made repeated demands for cash advances, she incurred many additional obligations of indebtedness, and I was a witness and personally present when she executed to William L. Taub assignments in the approximate sum of $100,000 for all monies due or to become due her from the engagement at the Huntington Hartford Theater in Hollywood and the Alcazar Theater for Randolph Hale in San Francisco; the said assignments representing monies due and to become due the said William L. Taub and the said assignments which were prepared by our legal counsel, and after being executed by her were filed with the County Clerk in Los Angeles County, Los Angeles, California, and with the County Clerk in San Francisco County, San Francisco, California, and one assignment was properly served upon the Huntington Hartford Theater in Hollywood, and I personally made service of one of the said assignments to Randolph Hale and he personally acknowledged service of the notice and assignment.

9. The show with Miss Baker appeared for two weeks in Hollywood, California. Because of several unpaid judg-

ments obtained against Miss Baker by California creditors, the theater box office was attached almost daily by the Sheriff and attempts were made to seize the theatrical properties belonging to Mr. Taub. This resulted in very unfavorable publicity and did seriously affect the financial success of the show.

10. Randolph Hale, of the Alcazar Theater, San Francisco, California, whom I know in person, came to the Huntington Hartford Theater in Hollywood to watch the show. He had executed a three week contract with Mr. Taub for the presentation of this show in the Alcazar Theater in San Francisco. He wanted several changes made and Mr. Taub referred him to me for further discussion. When the show closed in Hollywood, Miss Baker was heavily in debt and was again making financial demands from Mr. Taub, which now were refused.

11. Mr. Taub and I maintained executive offices at the 20th-Century Fox Studios in West Los Angeles, California, and Mr. Taub had a contract with the 20th Century-Fox Company to record a series of albums with Miss Baker. Immediately after the show closed in Hollywood, rehearsals were commenced at a sound stage on the 20th-Century Fox Studios, West Los Angeles, with a new director, Raoul Appel, and Mr. Taub and I were personally present every day at rehearsals on the stage and also attending the business in our offices nearby. During a morning production meeting in Mr. Taub's office, attended by Mr. Appel, Ray Jarvis and Alton Ruff, both performers, Mr. Taub and myself, a telephone call came announcing the arrival of Randolph Hale. He entered our private office where we were all present and came together with another man whom he introduced as his associate, financial partner, and important personality from San Franciso, but we did not then know the real identity of his partner. Mr. Hale made demands that the format of the show be changed, that the

terms of his contract be modified and changed, and Mr. Taub refused all of his requests. In my presence, and the presence of all the others, he threatened that Mr. Taub would never present the show at the Alcazar Theater in San Francisco and "would never set foot in San Francisco," and that "the influence of his co-partner would be used effectively against us throughout all of California."

12. Two days later the entire theatrical company, together with Mr. Taub and me, were summoned to the office of Mr. Hale's Los Angeles attorney, I. Kornblum, Esq. Mr. Kornblum practically ordered Mr. Taub to release Mr. Hale from his contract and agree to a substituted one or alternatively accept Fifteen Thousand Dollars ($15,000.00) in full settlement of all and any claims of Mr. Taub. Otherwise he cautioned that Mr. Taub would be replaced immediately as the producer, lose his show and property and be compelled to leave California. Both Mr. Taub and I consulted our Los Angeles attorney and the same day we rejected the ultimatum of Mr. Kornblum.

13. Mr. Kornblum, Mr. Hale, Miss Baker and others then conspired to seize the show, all the property rights, contracts, material, music, costumes, etc., and ordered everyone to appear the following morning on stage at the Alcazar Theater in San Francisco. All of the parties under contract did appear, using the transportation provided and paid for by Mr. Taub to get there. I also appeared at the Alcazar that same Monday morning, by instructions of our Los Angeles attorney, and I appeared there for Mr. Taub. Directly on the same stage at the same time at the Alcazar Theater was the same person, the same co-partner and associate of Mr. Hale whom I had met the previous week in our office in Los Angeles, together with Mr. Hale and with whom I had conversation in person and this same co-partner was the same Judge George B. Harris. He expressed amazement at seeing me in San Francisco but I

still did not know that he was a judge of the U.S.D.C. San Francisco. It was he and Mr. Hale who conspired to seize all of our theatrical property and did present our show immediately thereafter in San Francisco at the Alcazar for two full weeks.

14. I went with Mr. Taub, Mr. Thacher and the U. S. marshals to the Alcazar Theater to seize the property belonging to us pursuant to the replevin order of the U.S.D.C. San Francisco. We were first refused admittance because the show was in rehearsal but before our very own eyes we saw our sets, costumes, music and theatrical properties being used. Incidentally, a telephone call was received from the chambers of U.S.D.C. Judge Louis E. Goodman ordering the U. S. marshals and all parties immediately to his chambers and the marshals did not ever seize any of our property, although a surety bond for replevin had been properly filed with the Court by Mr. Thacher. Both Mr. Taub and I were instructed to wait in Mr. Thacher's office and when he returned from Judge Goodman's chambers he was in "a state of shock." He said we should check out of the Fairmont Hotel immediately, leave the State of California at once, "someone at the Court was going to subject us and particularly Mr. Taub to serious physical trouble, possibly physical violence and upon our return to New York as well." He said that Mr. Hale's co-partner has invoked the "wrath of the gods upon us." None of us at that time knew the real identity of Mr. Hale's co-partner. Mr. Thacher stated that he would not continue as counsel in this matter, and that we obtain other counsel in California. Immediately upon checking out of the Fairmont Hotel we flew to Los Angeles, gathered our belongings, returned the next day to New York and almost immediately thereafter Mr. Thacher gave notice of his withdrawal as our ~~counsel~~ counsel. Mr. Taub had soon thereafter departed for Europe and was away for several months of business.

15. In the spring of 1962 both Mr. Taub and I learned about the efforts of Randolph Hale via Albert Gins, 36 West 44th Street, New York City, to try and collect from Mr. Taub on a default judgment obtained by Hale before U.S.D.C. Judge George B. Harris in San Francisco docketed in the Southern District of New York. I was personally present in our New York office when Mr. Taub was in Paris and I talked with him personally by overseas telephone from New York to Paris. I know that Mr. Taub was still in Paris when a process server alleged he had personally served Mr. Taub in New York with a citation for contempt and I did so testify with many other witnesses before Judge Dudley Bonsal, U.S.D.C. Southern District, New York. I also had knowledge that Mr. Taub had at the very same time been in attendance at a private audience at the Vatican with Pope John. Notwithstanding these facts Mr. Taub was continuously harassed, coerced, attacked, intimidated and threatened by Mr. Gins and one by one the same occurred to his attorneys who were compelled to withdraw after being retained to represent him in New York and California actions.

16. In April 1962 a photograph of Chief Judge U.S.D.C. George B. Harris, San Francisco, was made available to us, and there to our own eyes and for the first time we learned that the co-partner associate of Randolph Hale was identified as the same Judge George B. Harris. I have seen Judge Harris in person in Los Angeles, California, and in San Francisco. I have seen his picture from the Associated Press files and the San Francisco Examiner, and I do certify of my own free will that Chief Judge George B. Harris of the U.S.D.C. San Francisco is the identical same man introduced by Randolph Hale as his co-partner and business associate, the first time being in our office at 20th-Century Fox Studios, Los Angeles, California. Also at the Alcazar Theatre in San Francisco,

California, as referred to herein, and I reaffirm that he is the one and same person whom I have identified as being Judge George B. Harris.

ALBERT THALL

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

Sworn to and subscribed before me
this 25 day of August, 1966.

MURRAY A. STONE
Notary Public

MURRAY A. STONE
Notary Public, State of New York
No. 41-9207455
Qualified in Queens County
Certificate Filed in New York County
Term Expires March 30, 1968

Affidavit of Ray Jarvis

RAY JARVIS

1. I reside at 1632 Delmar Avenue in the City of Las Vegas, Nevada, and am a professional theatrical artist—singer and dancer—and have been so engaged for sixteen (16) years.

2. In the spring of 1960 I was employed by William L. Taub, a New York theatrical producer, to perform as a singer and dancer in a musical show entitled "The Fabulous Josephine Baker." We did rehearse in New York City for approximately two weeks and then traveled to Los Angeles, California, with New York-Los Angeles-San Francisco-New York; air transportation provided by the same William L. Taub. The show appeared for two weeks at the Huntington Hartford Theatre, Hollywood, California for two weeks, with all material including music, costumes, sets, props, provided by the producer, William L. Taub. When the show closed, we rehearsed for approximately two weeks on a sound stage at the 20th Century Fox Studios, West Los Angeles. The director was Raoul Appel—and Mr. Taub also had a suite of offices located nearby the sound stage, also at 20th Century Fox Studies.

3. I was personally present in Mr. Taub's office at a production meeting together with Mr. Taub, Raoul Appel, Albert Thall, the associate producer, and Alton Ruff, another performer, when a telephone call announced the arrival of Randolph Hale—owner of the Alcazar Theatre, San Francisco, with whom we were contracted to appear at his Alcazar Theatre in Frisco. When Mr. Hale arrived, he brought another man with him who was introduced as his associate and financial partner, from San Francisco. I personally met both Mr. Hale and his associate. Mr. Hale requested many changes.

in the show format and modification of the contract terms, which Mr. Taub refused, and Mr. Hale threatened that he would prevent Mr. Taub presenting the show in San Francisco at the Alcazar Theatre.

The very same week, I was called to the office of an attorney in Hollywood whose name was Hornblum, who was attorney for Randolph Hale. Mr. Hornblum stated Mr. Taub was being replaced as producer unless he agreed to demands made by Mr. Hale. I and all others were instructed to be at the Alcazar Theater in San Francisco for rehearsals and the opening—and used the transportation provided by Mr. Taub as well as monies advanced to me by him, to get there.

At the theater in San Francisco, I again met Mr. Hale with his "associate" and several other lawyers, marshalls, etc. The show appeared daily for two weeks—all of the same music, costumes, sets and theatrical property provided by Mr. Taub were used daily and were never seized by the U.S. Marshalls. Subsequently it came to my attention that the same "associate" I first met with Randolph Hale, who was also his partner in this show and other previous shows at the Alcazar Theater, and who I met almost daily at the same Alcazar Theater in San Francisco, California was Judge George B. Harris, of the U.S.D.C., San Francisco. At one time he talked with me in my dressing room and told me he had aspired for a theatrical career and also invited me to supper with him.

It was I who informed Mr. Taub subsequently and identified the associate business partner of Randolph Hale as Judge Harris—the same Judge Harris I saw personally at least ten times during our performances at the Alcazar Theater, San Francisco, in this show. Also, the picture of Judge George B. Harris, identified as the same man who was in Mr. Taub's office with Mr. Appel, Alton Ruff, and myself at 20th Century Fox Studies

and the same man I frequently saw and talked to at the Theater.

RAY JARVIS

STATE OF NEVADA,
COUNTY OF CLARK, *ss.*:

On the 23rd day of August, 1966, personally appeared before me Ray Jarvis, known to me to be the person whose name is subscribed herein and acknowledged that he did sign it of his own free will.

IRENE WEST

[Notarial Seal]

Affidavit of Raoul Appel

Monday, August 23rd, 1966

To: Mr. William L. Taub
605 Park Avenue
New York City 22, New York

Ref: FABULOUS JOSEPHINE BAKER SHOW

Dear Bill:

In reference to your case before the Supreme Court of the United States, concerning Randolph Hale and Josephine Baker and other persons involved, I would like to state my knowledge of this situation and observations, while I was the director of the FABULOUS JOSEPHINE BAKER SHOW.

My name is *Raoul Wilhelm Appel,* Producer-Director and Choreographer, with ten years experience in the professional theatre. I have been living and working the past five years in Tokyo, Japan.

In May, 1960, I was employed and engaged by you in Hollywood to re-direct the FABULOUS JOSEPHINE BAKER SHOW. This musical, originally produced by yourself and rehearsed in New York City, opened at the Huntington Hartford Theatre in Hollywood and ran for two weeks. We then closed the show down, and re-rehearsed it at the 20th Century Fox Studies in West Los Angeles under my direction. Miss Baker was the "star" of this show! To my knowledge, all of the music and costumes, sets and props of the show were provided by you. Also during the show performances at the Huntington Hartford Theatre, we together met a Mr. Randolph Hale, owner-producer of the Alcazar Theatre in San Francisco.

During a Production Conference in your Office at 20th Century Fox Studios, and while rehearsals were still going

on, and also in the presence of Al Thall, then your Associate Producer, dancers Ray Jarvis and Alton Ruff, as well as myself, Randolph Hale came to your Office. He came with another man introduced at that time as his Associate and financial partner from San Francisco. Mr. Hale made certain demands, such as program format changes, contract terms to be modified and other necessary changes or else, he implied, the show would not be presented in San Francisco!

Thereafter, I attended together with yourself a meeting in Mr. Kornblum's Office (Randolph Hale's Hollywood attorney), in which you were asked to accept US18,000 dollars for the show and bow out of the situation, or else again the implication that the show would not open in San Francisco.

I eventually as scheduled went up to San Francisco with Ray Jarvis and Alton Ruff, dancers in the show, to begin rehearsals and preparations for the opening of the show to be a few days later. During our first meeting on stage at the Alcazar Theatre, and several times afterwards, I noticed the presence of the previously introduced "associate and financial partner" of Randolph Hale. Also two nights prior to our opening, I was asked secretly to a meeting at the Hale Office in the Alcazar Theatre, at which time I observed that only Miss Baker, Stephen Papich, Hale and his associates were present, and the obvious absence of yourself, Al Thall or any of the dancers Jarvis and Ruff. Hale pointed out to me that you and he were having differences of opinion regarding the show, and offered me a contract to come over to his side and act as "his" director for the show, as he was intending to take over the show. He said that he liked my work, and had no quarrel with me. Despite the fact that he offered me an excellent contract, good money and working conditions, I protested that I felt his take over of "Mr. Taub's show" to be wrong, and therefore refused his offer. Minutes after

the meeting concluded, I advised you and Mr. Thall of the proceedings. I might add that other members of the show staff did accept Hale's offers, and Stephen Papich, who originally was the director of the show in New York City, prior to his being dismissed by yourself in Hollywood, and I replacing him, was there and then re-instated by Hale as the director of the show! Hale had said that if I would accept his "offer", that Papich would act as my Assistant Director for the show.

So they (Hale and associates) did in affect take over full possession of the show, and confiscated your properties of the show, and in turn did open the same show at the Alcazar Theatre. Actions taken by the U.S. Marshalls to halt the opening of the show until the matter could be straightened out, were turned down for some unknown reason, and the marshalls ordered away. Also to my knowledge none of the properties were ever returned to you Bill. I also overheard at that time various 'threats' made by Randolph Hale against you and Al Thall, should you try to enter the theatre or associate with the show in anyway. Due to the pure economics of the situation, dancers Alton Ruff and Ray Jarvis, who too felt you were being done an injustice, had no other choice but to co-operate and perform in the show, as they were bound by a union contract!

Due to the troubles and problems that followed in this case, I might add, I did not as Director-Choreographer of the FABULOUS JOSEPHINE BAKER SHOW receive any of the monies guaranteed to me by my original contract, namely a fee of same US2,000 dollars!

It also appeared that the "associate and financial partner" introduced to us all by Randolph Hale previously at your office in the 20th Century Fox Studios, as well as at the Alcazar Theatre, turned out in pictures in possession by Ray Jarvis and identified by us all at a later date, to be none other than Judge George B. Harris, of San Francisco.

This was not the same name used in the original introduction of this man in Hollywood.

With the passage of time Bill, unfortunately I do not recall any other smaller details of this case, but I do know that this was a clear cut case of Hale "stealing" a show from you. I hope that the above information will be of use to your case. Please do not hesitate to call on me further if I can be of any added assistance.

Sincerely yours,

RAOUL W. APPEL

4867 Coronado Street
San Diego 7, California

[Notarial Seal]

Subscribed and Sworn to before me this 24th day of August, 1966 Weston Van Deusen Notary Public in and for the County of San Diego, State of California.

Weston Van Deusen
My Commission Expires Dec. 14, 1969